

DRAFT FOR DISCUSSION 5/5/2004

Accountability and the *Code of Ethics and Values*

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1. Introduction

From the beginning of the Milpitas Ethics Program people have asked how Milpitas will hold people “accountable” for following the Code of Ethics during and outside of an election year. At our final Code workshop, we want to get your ideas on this topic. What kind of accountability program will work best in Milpitas? What’s the best way to support the Code of Ethics?

The purpose of this paper is to establish common ground and shared understanding on which we can build our discussions and from which we can move forward. Moving forward in a positive way is what our discussions at the workshop will be all about.

Please read this paper prior to attending the meeting on May 5. Thank you in advance for taking the time to do that.

2. Core Values: Leadership, Public Trust, and Accountability

An important characteristic of Milpitas’ *Code of Ethics* is its positive approach. Unlike many Codes which are comprised entirely of “do not’s,” this Code describes the way we are when we are “at our best” and challenges us to be that way every day in our regular work. The Code asks everyone who works with the City (elected, appointed, and Senior Staff) to become role models for these behaviors.

In our discussions of the Code before Council, we have drawn special attention to consistent and credible leadership from the top. It is the single most important characteristic for success. No ethics program succeeds in a city unless Council Members work actively to be credible and available role models for the City’s Code. The easiest way to do damage, perhaps fatal damage, to the new Code is for the leadership to say one thing in public, and to do something different in private. It is very true that what the public official **does** speaks more loudly to citizens than what he or she **says**.

As the stakeholder report noted, many people do not think the Council can lead this Ethics Program without some help. Far fewer people believe that candidates will act ethically unless there is some clear sanction for unethical behavior during the campaign. Whether one or more of these statements is true, the nature of possible Council help, and sanctions for candidates are among the items for discussion at the upcoming workshop. You will find some descriptions of what other cities have tried later in this paper.

The word “accountability” most often comes up in this context—someone has crossed the line and done something very wrong. What happens to this person?

This captures one very common usage of the word “accountability”: the process of assigning blame and punishing wrong-doing. There is, however, a different—and more positive--way to conceive of accountability. “

“In contrast, modern governance and public administration literature, and in some cases practice, see accountability more as a positive incentive—as an opportunity to demonstrate achievements and stewardship. In this view, accountability is an integral and indispensable part of establishing effective relationships for getting things done and taking responsibility”¹

There is a clear link between accountability and public trust. Even in the absence of a written Code, the public expects that those who govern it will work for the best interests of the City and not their own individual interests; they expect honesty, fairness, and a commitment to the common good. When a public official fails in one or more of these, the public themselves has a very effective mechanism to hold the officials accountable and that is at the ballot box if no other place.

But the public also expects officials who operate on the public’s behalf to hold each other accountable. This is even more the case once a City goes on the record as being committed to a specific Code of Ethics. Once the behaviors are made this explicit, public trust requires appropriate accountability.

There is no doubt of this. There is also no doubt that ethics programs succeed only if they are positive. “Positive” means we are clear about the behaviors we expect consistent with our Code; we celebrate successes and engage in positive reinforcement; we tell stories of values-centered behavior and recognize people who went beyond our expectations.

“Being positive” does not stand in opposition to an accountability system. In our Code implementation, we will be clear with people about the positive behaviors (the “looks like” behaviors) and what happens when they **practice** our core values. Similarly, we will describe clearly what these values do **not** look like in practice. We need to close the loop and describe what happens when people demonstrate behavior that clearly violates our basic values. What happens when people cross the line, perhaps repeatedly?

By answering this question, as well as by developing a culture of recognition, we can provide a complete reinforcement system for our Code. We do absolutely need an accountability system. Yet, once we have an appropriate, fair, and balanced accountability system in place, we should expect that we would rarely need to employ it, but would be prepared if circumstances call for it.

3. What is accountability?

Let’s begin with a brief discussion of accountability. When Canada reoriented its public service five years ago to focus on ethics and values, it listed this definition and characteristics of effective accountability systems:

Accountability is the process whereby the City and its leadership are responsible for their decisions and actions, and submit themselves to appropriate external scrutiny. In effect, accountability is the obligation to answer for a responsibility conferred and accepted.

¹ Office of the Auditor General of Canada and the Treasury Board Secretariat, “Modernizing Accountability Practices in the Public Sector,” Canada, 1998, p. 2. Available on-line at

Almost all definitions of accountability refer to a relationship that must exist between a person and those holding him or her accountable. Accountability systems work only if they are a formal part of an on-going relationship.

The process must be a mutually agreeable one. We must agree to the behaviors that are expected by one party and promised by the other. In return, those with the expectations must make clear ahead of time what they provide if the expectations are met. If someone does not agree ahead of time, it is difficult to hold people accountable for something they aren't aware they are supposed to do.

4. Principles of Effective Accountability Systems

Canada describes 5 *principles for effective accountability*:

a. Clear roles and responsibilities

The roles and responsibilities of the parties in the accountability relationship should be well understood and agreed upon.

b. Clear performance expectations

The objectives being pursued, the accomplishments expected and the constraints to be respected should be explicit, understood and agreed upon ahead of time, not after the fact.

c. Balanced expectations and capacities

The performance expectations need to be clearly linked to and in balance with the capacity (authorities, skills and *resources*) of each party to deliver.

d. Credible reporting

Credible and timely information should be reported to demonstrate the performance achieved and what has been learned.

e. Reasonable review and adjustment

Enlightened and informed review, feedback, and action on the performance achieved should be carried out by the accountable parties, where achievements and difficulties are recognized and necessary corrections made.

Something has to happen as a result of reporting accountability information in order to 'close the loop'. The party or parties reviewing results need to consider what has been accomplished in light of expectations and the circumstances that existed, and then recognize achievements as well as under-achievements. Where expectations have clearly not been met, corrective actions may need to be taken, possible adjustments to the accountability arrangement made and lessons-learned noted. An accountability relationship without follow-up is clearly incomplete and unlikely to be effective.

9. Proposals for Discussion on Developing Accountability Systems

a.) Accountability for candidates: we can do any or all of the following

1. At the start of the campaign cycle, hold a workshop for candidates, consultants, and volunteers on “Running an Ethical Campaign.” Discuss practical matters such as making your values clear ahead of time, appointing someone with special focus on ethics, anticipating roadblocks. Invite citizens and the press.
2. After the election, in December, get everyone back into the room for an accountability session when people can be asked directly about specific issues in their campaign.
3. Facilitate a conversation between candidates at the start of the campaign where they develop ground-rules to avoid problems. Create a culture where it is OK to be asked about decisions and tactics to defend.
4. Have all candidates sign a statement acknowledging receipt of the Code, as well as their acknowledgement of the City’s expectations that they follow it.
5. Whistleblow if there are significant problems with FPPC rules and procedures. The City Clerk or City Attorney, or any citizen could lodge a complaint.
6. Build a positive culture by training, discussion, and persuasion.
7. Some agencies provide enforcement measures in their policies. A typical one might read like this:

Any violation of the Code of Ethics by a member of the City Council, or by another elected or appointed official, or by a candidate for office shall constitute official misconduct if determined by an affirmative vote of three members of the City Council in an open and public meeting. In addition to any criminal or civil penalties provided by Federal, State, or local law, any violation of the Code of Ethics shall constitute a case for censure by City Council adoption of a Resolution for Censure.

Note that there are a number of options in addition to “censure,” including “condemnation,” “warning,” and others. Fines are also possible.

8. Establish a web site to post the truth when a hit piece that misleads the voters is mailed out. Perhaps work closely with the local newspaper on this.
9. Note that I do not favor a Review Board to rule on ethics charges prior to an election. In every jurisdiction where these exist, they encourage “vigilante ethics,” i.e., using ethics as another campaign strategy, lodging ethics complaints in the last few days of the race to gather headlines.
10. The Milpitas Code should replace the County Ethics Foundation Code and process. While this is an important effort in cities with little ethics work, in Milpitas it has made vigilante ethics more of a possibility.
11. Encourage the unions and others who endorse candidates to hold those candidates accountable to the Milpitas Ethics Code.
12. Develop training for citizens in how to assess the ethics of political campaigns prior to voting.
13. Develop a partnership program, involving stakeholder groups in holding their members accountable for fair practices. We should pattern this on the work of the Campaign Ethics Foundation in Silicon Valley.
14. Develop a protocol at the Campaign workshop to determine what it looks like to “immediately repudiate” a third party.

b.) Accountability for elected and appointed officials

Many of the strategies in the previous list can be used with elected and appointed officials. In addition:

1. The CAC takes on a special role in the accountability process for Council and other Commissioners. Engage some portion of the 120 Commissioners as citizens who know and are paying attention.
2. Engage the business community through the Economic Development efforts or the Chamber to provide feedback to the City for accountability purposes.
3. Appoint an independent ethics commission, comprised of wise, experienced, good people, the majority of whom live or work in Milpitas, but include a minority of representatives with expertise and complete independence. The Council could delegate oversight and future development of the ethics program to this group. This group would oversee the following processes.

c.) Citizen Complaints

We need to develop a clear process for citizen complaints. Many jurisdictions have a standardized form for citizens to fill out to start the process. The form should be part of a broader effort to alert citizens to our new Code, to the positives they should experience, and what to do if they feel they have not been treated according to Code. Citizen education in what a behavior warranting a complaint actually looks like is also strongly encouraged. Citizen complaints would need a hearing officer or an investigator, usually appointed by the City Manager. If the Manager has a conflict, the Mayor could play a similar role.

d.) Lobbyist Registry

Adopt a mechanism to force all lobbyists, political consultants, fundraisers, and others to register as lobbyists. We can learn from best and worst practices by comparing ourselves to San Jose, San Francisco, and Los Angeles.

f.) Campaign Finance

Study the experience of cities with voluntary limits on the amount of money that can be spent on an election. .

10. Small Group Discussion

Which of the above strategies does your small group believe would help us to advance the Code of Ethics and our core values the most?

Give your group's best advice to the City on how to hold people accountable. In determining the best course of action, use these ethics questions:

- 1. What action can we take that will give us the greatest balance of goods over harms? Which action will do more good than harm?**
- 2. What rights do individuals have that should be protected and that the Council has a duty to protect?**

3. ***What is the fairest way for us to proceed? In this, fairness means that we use equitable criteria to assign benefits and burdens. Equitable criteria? Treat equals equally. If you make a change for this one case, will you make the change for everyone else who is in a similar circumstance?***
4. ***What best advances the City's Core Values of honesty, respect, fairness, teamwork, stewardship, and accountability?***
5. ***What best advances the interests of our community as a whole?***

See if you can come up with options which satisfy all the perspectives represented in these questions. The questions are derived from ethics norms and principles which have stood the test of time.